

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

934 CRA NO. 15 OF 2022

**SUNITA VASUDEO PANDE
VERSUS
SUSHMA DEVIDAS PATIL AND OTHERS**

...

Ms. Supriya Kulkarni, Advocate holding for Mr. N.K. Tungar,
Advocate for the applicant.

Mr. Adesh Ban, Advocate holding for Mr. R.V. Gore,
Advocate for respondent No.1.

Mr. P.P. Patni, Advocate holding for Mr. P.F. Patni,
Advocate for respondent No. 4.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 10 OCTOBER 2024

ORDER:-

1. Heard rival submissions.
2. The applicant/original defendant No.3 in Regular Civil Suit No. 152 of 2013 has filed application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure (for short, "C.P.C"), which has been rejected by the learned trial Court i.e. Civil Judge (Junior Division), Kannad on 06.10.2021. On going through the record and the impugned order, it appears that the present applicant/defendant No.3 had raised two grounds for rejection of the plaint viz; the suit is undervalued and secondly it is barred by law as the suit property was absolute property of

deceased father of the plaintiff. However, on perusal of the impugned order, it indicates that the application for plaintiff at Exh.35 before the learned Trial Court mentioning that she was ready and willing the court fees as per law, was allowed by the learned trial Court. As such, the ground for rejection of the plaint on that count of suit being undervalued is now no more in existence.

3. Further, the applicant had raised ground that suit of the plaintiff i.e. present respondent No.1 is barred by law since the suit property was absolute property of deceased father of the plaintiff. However, the plaintiff i.e. respondent No.1 has contended that she has right in the suit property by birth by mentioning it as an ancestral property. This contention of the plaintiff has to be proved in the light of evidence and therefore, the defence of the present applicant cannot be considered at this stage for rejection of plaint since only the averments in the plaint are to be considered for deciding application under Order VII Rule 11 of C.P.C. As such, no perversity is found in the impugned order and according the present Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)